Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements	)	**WC Docket No. 02-112**
	)	
	)	

WORLDCOM REPLY COMMENTS

WorldCom, Inc. (WorldCom) hereby submits its reply to comments on the Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. In the Notice, the Commission sought comment regarding the sunset of the statutory requirements under section 272 imposed on Bell Operating Companies (BOCs) when they provide in-region, interLATA telecommunications services through separate corporate affiliates.

I. The RBOCs' Interpretation of Section 272(f)(1) is Wrong

In the Notice, the Commission interpreted the section 272(f)(1) sunset as occurring on a state-by-state basis.[1] The RBOCs, in contrast, argue in their comments that the section 272(f)(1) sunset occurs on a BOC-by-BOC basis, with the three-year clock starting on the day that the BOC first obtains section 271 authority in any of its states. For example, Verizon contends that the section 272 requirements would sunset in both states in which Verizon New York operates – New York and Connecticut – in December, 2002 (three years

[1] Notice at ¶ 7.

after Verizon New York obtained interLATA authority in New York, but only eighteen months after Verizon New York obtained interLATA authority in Connecticut).[2]

The RBOCs' suggested interpretation of section 272(f)(1) is wrong. The Notice's recognition that there is a separate three-year clock for each state simply reflects the fact that the BOCs apply for, and are granted, interLATA authority on a state-by-state basis.[3] Pursuant to section 272(f)(1), the section 272 requirements may sunset 3 years after the date on which the Bell operating company "is authorized to provide interLATA telecommunications services under section 271(d)."[4] Because Bell operating companies are "authorized to provide interLATA telecommunications services under section 271(d)" on a state-by-state basis,[5] the section 272(f)(1) sunset must also occur on a state-by-state basis.

Moreover, even assuming arguendo that the section 272(f)(1) sunset does occur on a BOC-by-BOC basis, the second part of the BOCs' argument – that the three-year clock starts as soon as soon as the BOC obtains section 271 authority in any one of its states – is without merit. If the RBOCs are correct that the first reference to "Bell operating company" in section 272(f)(1) refers to the BOC as a whole, then the second reference to "Bell operating company" in section 272(f)(1), which specifies when the three-year clock starts, must also refer to the BOC as a whole. The RBOCs interpret section 272(f)(1)'s references to "Bell operating company" inconsistently, arguing on the one hand that the sunset occurs for the "Bell operating company" as a whole while on the other hand arguing that the three-year clock may start before the "Bell operating company" as a whole has obtained

[2] Verizon Comments at 4.
[3] Notice at ¶ 7.
[4] 47 U.S.C. § 272(f)(1).
[5] 47 U.S.C. §§ 271(d)(1) ("[A] Bell operating company or its affiliate may apply to the Commission for authorization to provide interLATA services originating in any in-region State.")

interLATA authority pursuant to section 271(d). If the Commission agrees with the RBOCs that the section 272 sunset occurs for the BOC as a whole, then it must also find that the sunset occurs three years after the date on which the BOC as a whole has obtained interLATA authority. For example, the section 272 requirements for Verizon New York would sunset three years after Verizon New York as a whole obtained interLATA authority, i.e., in mid-2004, three years after Verizon New York obtained the authority to offer interLATA services in both Connecticut and New York.

The RBOCs' interpretation of section 272(f)(1) – that the section 272 safeguards sunset for the BOC as a whole three years after the date on which the BOC first obtains interLATA authority in any of its states – could lead to absurd results. In the later-authorized states, a BOC could potentially be subject to the separate affiliate requirement for less than three years. Indeed, if the gap between the first authorization and later authorizations were greater than three years, a BOC could potentially offer interLATA services in the later-authorized states on an integrated basis immediately after obtaining interLATA authority. That result would be contrary to Congress's recognition that "the local exchange market will not be fully competitive immediately upon its opening."[6] That result would also be inconsistent with the section 271(d)(3)(B) requirement that the Commission evaluate whether section 271 authorizations "will be carried out in accordance with the requirements of section 272."[7]

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[6] Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-149, released December 24, 1999 (Non-Accounting Safeguards Order) at ¶ 8.
[7] 47 U.S.C. § 271(d)(3)(B).

II. The Commission Should Retain the Section 272 Safeguards as Long as the BOCs Remain Dominant Carriers

The record of this proceeding demonstrates that interLATA providers are still dependent on the RBOCs for key inputs, even in those states where the RBOCs were first found to have met the section 271market-opening checklist. The Texas PUC, for example, reports that "SWBT's continued dominance over local exchange and exchange access services still hinders the development of a fully competitive market."[8]

Competing carriers show that, even in the states where the RBOCs have obtained section 271 authority, the RBOCs continue to control the vast majority of switched access lines.[9] And, even when CLECs have been able to "win" switched access lines from the RBOCs, "the large majority of such lines are obtained from the ILEC"[10] as UNE loops, UNE-P, or as special access circuits. The record shows that such forms of local competition have only a tenuous hold even in 271 states; as the Texas PUC notes, fines imposed on SBC for "over 525 separate violations" of the Texas performance measures have not "disincent[ed] anti-competitive and/or discriminatory behavior."[11]

Similarly, in the larger business and data markets, competing IXCs remain dependent on RBOC-provided special access services, particularly channel terminations. For example, Time Warner Telecom, one of the largest facilities-based CLECs, reports that "in a very significant percentage of cases, [Time Warner Telecom] is precluded from constructing its own special access facilities."[12]

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[8] Texas PUC Comments at 3.
[9] Sprint Comments at 7-8; Missouri PSC Comments at 3.
[10] Sprint Comments at 8.
[11] Texas PUC Comments at 6; See also Missouri PSC Comments at 3-4.
[12] Time Warner Telecom Comments at 7-8.

There is no merit to the RBOCs' contention that they do not have the ability or incentive to use their control of key inputs in an anticompetitive manner. Even with the section 272 safeguards in place, the record of this proceeding provides substantial evidence that, in the larger business market, the RBOCs discriminate against their competitors in the provision of special access services.[13] The record of this proceeding also provides substantial evidence that, in the residential and small business market, the RBOCs discriminate against their competitors in the processing of PIC changes and PIC "freezes."[14] Finally, the RBOCs have engaged in the misallocation of costs by, among other things, failing to value sales and marketing services provided by the BOC to the section 272 affiliate in accordance with the Commission's Part 32 affiliate transactions rules.[15]

Contrary to the RBOCs' claims, other safeguards would not provide sufficient protection if the section 272 requirements were permitted to sunset at this time. While the Non-Accounting Safeguards Order listed certain safeguards that would continue to apply if the section 272 requirements were allowed to expire, the Commission never assumed that those safeguards would provide sufficient protection only three years after the BOCs received interLATA authorization. Indeed, the Non-Accounting Safeguards Order stated that the Commission would rely solely on those other safeguards only "once local competition develops."[16] That statement was consistent with the Non-Accounting Safeguards Order's finding that section 272 requirements would remain necessary "in the

[13] AT&T Comments at 24-29; CompTel Comments at 7-10; Time Warner Comments at 4-11.
[14] CompTel Comments at 11-12; AT&T Comments at 29-32.
[15] AT&T Comments at 37-38; WorldCom Comments, CC Docket No. 96-150, April 8, 2002, at 5-6.
[16] Non-Accounting Safeguards Order at ¶ 271.

absence of full competition,"[17] or until "facilities-based alternatives to the local exchange and exchange access services of the BOCs make those safeguards no longer necessary."[18]

Because there is not "full competition" in the local market, the alternate safeguards cited by the RBOCs are insufficient. In the absence of full competition, as the Commission has found, a separate affiliate requirement is far more effective at detecting and preventing cost misallocations than the Part 64 rules.[19] Similarly, as the Commission has found, the section 272(e)(1) nondiscrimination prohibition alone "would offer little protection" if a BOC were permitted to offer interLATA services on an integrated basis.[20] Moreover, the Commission still has not adopted reporting requirements that would provide competitors with "the information they require in order to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1)."[21]

III. The Section 272 Requirements Do Not Burden the RBOCs

The RBOCs' complaints that they are placed at a cost disadvantage by the "burdens" of complying with the section 272 requirements are not credible. No independent analyst has ever found that the section 272 requirements place the RBOCs at a cost disadvantage. In fact, a recent Morgan Stanley analysis projecting the costs and revenues associated with

[17] Time Warner Comments at 22 (citing Non-Accounting Safeguards Order at 9).
[18] Id.
[19] Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area and Policy and Rules Concerning the Interstate, Interexchange Marketplace, 12 FCC Rcd 15756, 15853 at ¶ 169 (Interexchange Order) (rejecting Sprint's argument that the cost allocation rules alone are sufficient to prevent cost shifting, finding instead that the requirement that a separate affiliate "maintain separate books of account is necessary to trace and document improper allocations of costs or assets between a LEC and its long distance affiliate").
[20] Non-Accounting Safeguards Order at ¶ 160.
[21] Non-Accounting Safeguards Order at ¶ 368.

the RBOCs' entry into the long distance market does not even mention the section 272 requirements.[22]

As WorldCom, Time Warner Telecom and others show in their comments, the Commission has permitted the BOCs and their section 272 affiliates "significant opportunities to establish economies of scale and scope."[23] Most importantly, the permitted sharing of sales and marketing services already provides the BOCs' long distance affiliates with significant cost advantages that are not available to other interLATA carriers. For example, the group president of Verizon's long distance operations has reported that the sharing of sales and marketing services provides Verizon with "customer acquisition costs [that] are 20% to 30% lower than [other] long-distance companies'."[24]

Nor are the RBOCs placed at a competitive disadvantage by the section 272 restrictions on the development, installation, and maintenance of services. Contrary to the RBOCs' contention that other interLATA carriers have an advantage because they can offer seamless "end-to-end" service,"[25] the reality is that in the vast majority of cases WorldCom and other long distance companies must, like the RBOCs' section 272 affiliates, coordinate their installation, repair, and maintenance activities with the BOC, even when serving larger enterprise customers.[26] Whatever difficulties the RBOC section 272 affiliates may experience in coordinating those activities with the BOC are also faced by WorldCom and

[22] Morgan Stanley Equity Research, *Does Long Distance Make Cents for the Bells?*, November 2, 2001.
[23] Time Warner Comments at 17.
[24] http://www.usatoday.com/life/cyber/invest/ina297.htm
[25] Verizon Comments at 20; SBC Comments at 8-10.
[26] Non-RBOC IXCs can offer seamless "end-to-end" service only in those cases where they have built local fiber all the way to end user premises at both ends of the circuit. Given that the record in the Triennial Review proceeding shows that CLECs have built their own fiber to no more than about 30,000 buildings nationwide, such opportunities are extremely rare. Moreover, because enterprise customers are typically multilocation customers, non-RBOC IXCs typically need to use BOC access services even when the IXC's local fiber may reach some of the customer's sites.

every other interLATA carrier that is dependent on the BOC network to reach its customers. Indeed, the requirement that the RBOC section 272 affiliate suffer the same frustrations as other long distance carriers when dealing with the BOC is one of the cornerstones of the section 272 nondiscrimination safeguards.[27]

IV. The Commission Should Retain the Section 272 Safeguards

Contrary to the RBOCs' argument,[28] section 272(f)(1) does not establish a presumption that the section 272 requirements expire after three years. Rather, section 272(f)(1) imposes the section 272 requirements for a minimum three-year period that the Commission has the unrestricted authority to extend "by rule or order."[29]

There is widespread agreement that the Commission should, at a minimum, extend the section 272 safeguards for an additional three years[30] or until the Commission has conducted and reviewed a second section 272(d) audit,[31] in order to allow additional time for local competition to develop and for regulators to evaluate RBOC behavior in the interLATA market. As AT&T and the Texas PUC discuss, regulators have not yet had the opportunity to act on serious allegations of BOC misconduct.[32] Moreover, the section 272(d) audit process has not yet provided a meaningful opportunity to evaluate RBOC behavior in the long distance market. First, only one section 272(d) audit report has been released to the public in unredacted form. Second, the audits that have been conducted to

[27] Non-Accounting Safeguards Order at ¶ 160.
[28] See BellSouth Comments at 4; Verizon Comments at 3; Qwest Comments at 3-4;
[29] 47 U.S.C. §272(f)(1).
[30] Sprint Comments at 3; CompTel Comments at 20-22; AT&T Comments at 48-50.
[31] Pennsylvania PUC Comments at 5-6; Missouri PSC Comments at 4; Texas PUC Comments at 8-9; Wyoming PSC Comments at 2; Comments of the Texas Attorney General at 1; Washington UTC Comments at 2.
[32] AT&T Comments at 22-23; Texas PUC Comments at 6-7.

date cover only the first year of the RBOCs' interLATA operations in a handful of states; the Texas PUC cautions against placing too much reliance on a single audit "given the inherent shortcomings of auditing an evolving company in a developing market."[33] Finally, as WorldCom and AT&T showed in their comments on the Verizon section 272 audit report, the section 272 audits conducted to date have been deficient in several respects. For example, the Verizon section 272 audit did not investigate Verizon's provision of special access services "to itself," as is required in order to evaluate an RBOC's compliance with section 272(e)(1).[34]

If the Commission allows the section 272 requirements to expire while the RBOCs remain dominant carriers, which it should not, the Commission should impose alternate safeguards in order to constrain the inevitable anticompetitive behavior. At a minimum, the RBOCs should be subject to the Fifth Competitive Carrier Order separation requirements that currently apply only to independent LECs.[35] Given that the Commission has found that the RBOCs are more likely to be able to engage in anticompetitive conduct than the independent LECs,[36] it is clear that the safeguards applied to the RBOCs should be no less stringent than those applied to the independent LECs.[37] While not as effective as the section

[33] Texas PUC Comments at 8.
[34] WorldCom Comments, CC Docket No. 96-150, April 8, 2002, at 7-8
[35] 47 C.F.R. § 64.1903; Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Thereof, Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Competitive Carrier Order).
[36] Interexchange Order at ¶¶ 170, 229.
[37] Verizon tries to avoid this issue by suggesting that the Commission should simply eliminate the prohibition on joint ownership of facilities in Section 64.1903 of the Commission's rules. Verizon Comments at 14. However, as WorldCom showed in its November 1, 2001 comments in CC Docket No. 00-175, there have been no significant changes in competitive conditions in the two years since the Commission last reaffirmed the Fifth Competitive Carrier Order separation requirements in the Second Order on Reconsideration and Memorandum Opinion and Order in CC Docket No. 96-149, 14 FCC Rcd 10771 (1999). Certainly, there is no basis for modifying Section 64.1903 as it applies to the larger independent LECs, including the former GTE and Sprint. The safeguards imposed on the RBOCs should be no less stringent than those imposed on GTE and other large independent LECs.

272 safeguards, the Fifth Competitive Carrier Order separation requirements would at least provide some assistance in detecting discriminatory behavior by the BOCs. As the Commission has explained, the prohibition on jointly owned facilities and the requirement that the LEC's interLATA operations obtain access services pursuant to tariff help deter discrimination "by requiring the affiliates to follow the same procedures as competing interexchange carriers to obtain access to those facilities."[38]

In addition, the Commission should not permit the section 272 requirements to expire unless the Commission has first adopted the Joint Competitive Industry Group (JCIG) proposal for comprehensive special access performance measures, performance standards, reporting requirements, and enforcement procedures to govern the provision of interstate special access services for incumbent local exchange carriers.[39] Without such a performance monitoring program in place, it would be extremely difficult for the Commission or RBOC competitors to detect RBOC violations of the nondiscrimination provisions of section 272(e)(1). The JCIG proposal would provide competitors with "the information they require in order to evaluate whether the BOCs are fulfilling their requests for telephone exchange service and exchange access in compliance with section 272(e)(1)."[40]

The Commission should also adopt a requirement that the RBOCs report on their PIC-change performance, continuing the PIC-change reporting requirement that the RBOCs agreed to as part of their section 271 applications. The Commission has proposed such a PIC-change reporting requirement in the 1996 Further Notice in the CC Docket No. 96-149

[38] Interexchange Order at ¶ 163.
[39] Focal Comments at 6-7; Covad Comments at 3-4; Time Warner Comments at 25-29; Sprint Comments at 3.
[40] Non-Accounting Safeguards Order at ¶ 368.

non-accounting safeguards proceeding.[41]

IV. Conclusion

For the reasons stated herein, the Commission should retain the section 272 requirements as long as the RBOCs remain dominant carriers.

Respectfully submitted,
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[41] Non-Accounting Safeguards Order at ¶ 372.